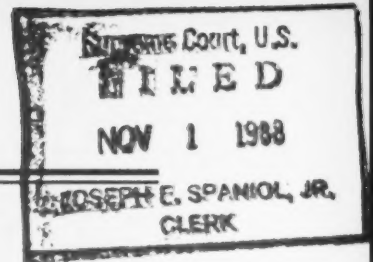


No. 88-296



IN THE
Supreme Court of the United States

OCTOBER TERM, 1988

WALTER J. SHOSTAK,

Petitioner,

vs.

FEDERAL ENERGY REGULATORY COMMISSION,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF TO
THE MEMORANDUM FOR THE
RESPONDENT IN OPPOSITION

WALTER J. SHOSTAK
Pro Se
29 West 12th Street
Bayonne, New Jersey 07002
(201) 436-6363



IN THE SUPREME COURT COURT OF THE
UNITED STATES

October Term, 1988

No. 88-296

Walter J. Shostak, PETITIONER

vs.

Federal Energy Regulatory Commission,

RESPONDENT

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PETITIONER'S REPLY BRIEF TO THE
MEMORANDUM FOR THE RESPONDENT
IN OPPOSITION

This reply brief is submitted pursuant
to Rule 22.5 of the U.S. Supreme Court
Rules.

Respondent, in his "Memorandum For the
Respondent in Opposition" brief, dated

October 1988, has made inaccurate assumptions and has made misleading comments relative to Federal Energy Regulatory Commission (F.E.R.C.) Project 9074, Licensing, March 29, 1985 and 8719, Preliminary Permit, November 15, 1984.

(A) On Page 3 of Respondent's Opposition Brief, Respondent states, "On February 3, 1987, he (Petitioner) filed an untimely Motion To Intervene in the Adirondack Hydro Development Proceeding."

This is an incorrect assumption made by the Respondent.

The Petitioner's Letter received by FERC February 3, 1987, dated January 28, 1987 (see Appendix E), is Petitioner's Letter of Appeal to the issuance of License 38 FERC 62,087, to the Adirondack Hydro Development Project 9074 and Schroon River Hydro Associates project

8719. This Petitioner's Appeal Letter of January 28, 1987 was filed timely, within the 30 days required by the License 38 FERC 62,087 dated January 30, 1987.

(B) On Page 4 of the Respondent's Opposition Brief, Respondent states, "The May 24, 1985 Intervention Motion, (see Appendix D), however does not fairly admit of that construction," i.e. for Project 9074. This is an inaccurate and misleading statement. The Project Number 9074 is mentioned on Page 2 of the Petitioner's May 24, 1985 Intervention Motion, and accurately admits of that construction.

The May 24, 1985 Intervention Motion Letter applied to both FERC Projects 9074 and 8719. FERC Projects 9074 and 8719 are the same project.

This May 24, 1985 Intervention Motion on Page 1 stated:

(1) "Reference to this Project No. 8719.000 and any other present or future such project, the applicable Water Rights Deed filed in Book 74, Page 270 dated 10/14/1895." The other project was mentioned on Page 2 of this Intervention Letter of May 24, 1985, as Project 9074.000, Adirondack Hydro Development Corporation officially filed March 29, 1985, two months earlier.

(2) Also on Page 1 of the Intervention Letter of May 24, 1985, it stated "By virtue of the Attachments, the subject applicant or any one else is prohibited by the Water Rights Deed of October 14, 1895, as filed in Book 74, Page 270, in making any alterations to the dam mentioned above in the Schroon River, Warrensburg, New York." The "anyone else" above refers again to the Project 9074, Adirondack Hydro Development

Corporation, mentioned on Page 2 of the May 24, 1985 Intervention Letter.

(3) Items (B), (1) & (2) above clearly refer to any project that would involve rehabilitation of this Schroon River, Warren County, Warrensburg, New York Dam. This Intervention Motion Letter of May 24, 1985 was not opposed by FERC and at the end of 15 days the Petitioner became a "party" to both Projects 9074 and 8719 mentioned in this Intervention Letter of May 24, 1985 (18 CFR 385.214(c)).

CONCLUSION

Becoming a "party to the proceedings" occurs only once for any one project. The Federal Power Act does not require repeated Intervention Motions for the same project. Changing the name or number of the project does not interrupt the actual physical conditions. The project here is the one and only Schroon

River, Warrensburg, New York Dam, Warren County, breached about 10 years ago, and requiring extensive rebuilding.

If the intervenor states his interest in a project in sufficient factual detail for any one project, and is accepted in party status, there would be no legal purpose in repeating this process of Intervention Motions.

Also, of suspicious nature is the fact that, the applicant for preliminary permit, Schroon River Hydro Associates, Project 8719, submitted a non-existent business address in the filed application and newspaper advertisement.

Also, the Schroon River Hydro Associates are not a registered corporation in the State of New York.

It is therefor again respectfully submitted that the Petition for the Writ of Certiorari be granted to Petitioner.

Respectfully submitted,

By Walter J. Shostak
Walter J. Shostak, Pro Se
29 West 12 Street
Bayonne, New Jersey 07002
(201) 436-6363

October 1988



APPENDIX

APPENDIX D

Certified No. P-419-336-826
Return Receipt Requested
Special Delivery
Page 1 of 2

May 24, 1985

Mr. Kenneth F. Plumb, Secretary
Federal Energy Regulatory Commission
825 North Capital Street N.E.
Washington, D.C. 20426

"MOTION TO INTERVENE"

"PROTEST"

Subject

Schroon River Hydro Associates .
Preliminary Permit Application Number
8719-000 filed November 15, 1984 for the
Warrensburg, N.Y. Schroon River
Hydroelectric Power Plant project and
filed with the Federal Energy Regulatory
Commission March 27, 1985 in the
Warrensburg-Lake George news, Wed, April
17, 1985.

Page 1 of 2

Attachments:

- 1 - Legal Notice as described in the Warrensburg-Lake George News Wed. April 17, 1985.
- 2 - Application for Preliminary Permit for the Schroon River Project by Schroon River Hydro Associates , Dated November 1984, and Numbered P-8719-000 by Federal Energy Regulatory Commission on Nov. 15, 1984.
- 3 - Property ownership Deed of Walter J. Shostak filed in Book 582, Page 820 and Dated 7/11/74.
- 4 - Property Survey of Schroon River Property of Walter J. Shostak Dated 4/17/80.
- 5 - Reference to this Project No. P-8719-000 and any other present or future such project the applicable Water Rights Deed filed in Book 74 , Page 270 Dated 10/14/1895.

Page 1 of 2

SUMMARY

By virtue of the attachments, the subject applicant or anyone else is prohibited by the Water Rights Deed of October 14, 1895 as filed in Book 74 , Page 270 , in making any alterations to the dam mentioned above in the Schroon River, Warrensburg, New York. Major alterations are anticipated by the subject applicant to this "EXISTING DAM."

Based on the above , it is requested by the writer of this letter this Schroon River Water Project be denied until "Resolution of the Water Rights ISSUE is ACHIEVED."

Sincerely,

Walter J. Shostak
29 West 12th Street
Bayonne, New Jersey 07002

Page 2 of 2

Letter Dated May 24, 1985

List of Distribution:

Mr. Fred E. Springer, Director
Division of Project Management Branch
Office of Hydropower Licensing
Federal Energy Regulatory Commission
Room 208 RB
825 North Capital Street, N.E.
Washington, D.C. 20426

Mr. Ruben S. Brown
Schroon River Hydro Associates
1250 Broadway
New York, New York 10001

Mr. Edward Tracy
Federal Energy Regulatory Commission
Room 2207
26 Federal Plaza
New York , New York 10007

State of New York
Adirondack Park Agency
P.O. Box 99
Raybrook, New York 12977

Mr. Eckhardt C. Beck
U.S. Environmental Protection Agency
Region II
Room 10009
26 Federal Plaza
New York, New York 10007

Page 2 of 2

N.Y.S. Dept. of Environmental
Conservation
Division of Regulatory Affairs
50 Wolf Road
Albany , New York 12201
Attn: Mr. Fred Howell

Adirondack Hydro Development Corporation
Potsdam Industrial Plaza
Potsdam, New York 13676
Attn: Project No. 9074-000
Schroon River Water Project

Federal Energy Regulatory Commissioners
Mr. Raymond J. O'Connor
Mr. Oliver G. Richard III
Mr. Charles G. Stalon
A.G. Sousa
Georgiana Sheldon
Federal Energy Regulatory Commission
825 North Capital Street N.E.
Washington, D.C. 20426

Certified No. P 309 862 306
Return Receipt Requested
Special Delivery
Page 1 of 2

APPENDIX E

WALTER J. SHOSTAK
Registered Architect
Licensed Professional Engineer
29 West 12th Street
Bayonne, New Jersey 07002

(201) 436-6363

January 28, 1987

Mr. Kenneth F. Plumb, Secretary
Federal Energy Regulatory Commission
825 North Capital Street N.E.
Washington, D.C. 20426

"MOTION TO INTERVENE"

"PROTEST"

Subject:

My Protest letter to you, dated May 24,
1985 (copy attached), concerning the
Schroon River Hydroelectric Power Plant

Page 1 of 2

Project, Warrensburg, New York including Preliminary Permit Applications Number 8719-000 for Schroon River Hydro Associates and Preliminary Permit Application Number 9074-000 for the Adirondack Hydro Development Corporation, has never been answered.

By virtue of all legal documents submitted to you in my letter of May 24, 1985 I strongly request that any Application submitted for this Schroon River Project be denied, pending RESOLUTION of my rights as stipulated in the Water Rights Deed of October 14, 1895, as filed in Book 74, Page 270 in the Warren County Courthouse.

This Water Rights Deed of October 14, 1895 prohibits making any alterations to the "Existing Dam."

Page 1 of 2

Your response to this letter is urgently
requested.

Sincerely,

Walter J. Shostak

Page 2 of 2

Letter Dated January 28, 1987
Schroon River Hydroelectric
Power Plant Project
Project No. 9074-000 and
Project No. 8719-000

List of Distribution:

Mr. Fred E. Springer, Director
Office of Hydropower Licensing
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825 North Capital Street N.E.
Washington, D.C. 20426

Mr. Martin Inwald
Federal Energy Regulatory Commission
26 Federal Plaza
New York, N.Y. 10007

State of New York
Adirondack Park Agency
P.O. Box 99
Raybrook, N.Y. 12977

Mr. Eckert C. Beck
U.S. Environmental Protection Agency
Region II
Room 10009
26 Federal Plaza
New York, N.Y. 10007

N.Y.S. Dept. of Environmental
Conservation
Division of Regulatory Affairs
50 Wolf Road
Albany, N.Y. 12201
Attn: Mr. Fred Howell

Page 2 of 2

Adirondack Hydro Development Corporation
Potsdam Industrial Plaza
Potsdam, N.Y. 13676
Project No. 9074-000
Schroon River Water Project

Federal Energy Regulatory Commissioners
Ms. Martha Hesse, Chairman
Mr. A.G. Sousa
Mr. Charles G. Stalon
Mr. C. N. Naeze
Mr. C. Trabant

Federal Energy Regulatory Commission
825 North Capital Street, N.E.
Washington, D.C. 20426

Walter J. Shostak

